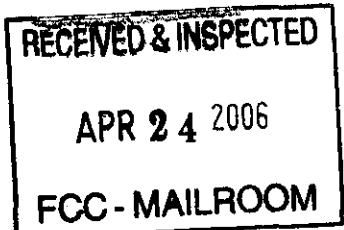


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Before the
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, SW
Washington, DC 20554



In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF CITY OF AUBURN, CALIFORNIA

These Comments are filed by the City of Auburn, California, in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). The City of Auburn has established, and currently manages, a successful franchise to the benefit of the general public that we serve, the cable services provider, and the institutions within the franchise jurisdiction. By this example, our local government can issue a franchise for any new entrants into the video services field on a timely basis, and on a level playing field, just as we have for our established cable services provider. On behalf of our community, we hope the Commission will also take these concerns into consideration:

- Establishment of an Anti-Competitive playing field by taking resources away from local communities and giving them to giant and remote corporations without fair compensation, where our community will be controlled by one or two dominant players who have legal authority to act as gatekeepers for most voice, data and video to the home over all potential competitors.
- Jeopardy to distance learning afforded to our schools and to our citizens, institutional networks used for public safety and homeland security, and the resources which have provided for cheaper, more efficient delivery of health and social services.
- Provisions to adequately support Public Access, Educational Access and Government Access programming that provide our community the vehicle with which to exercise our First Amendment rights.

In support of our abilities to effectively establish and manage a successful franchise, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Auburn, California is a city with a population of 12,775. Our franchised cable provider is Starstream Communications Inc. Our community has negotiated cable franchises since July 22, 1996.

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Our Current Franchise

Our current franchise began on December 1, 2004 and expires on October 31, 2019. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to City in the amount of five percent (5%) of the cable operator's revenue. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have four (4) channels devoted to public access; one (1) of these channels is devoted to educational access. The franchise agreement includes an additional provision, as part of the system upgrade, for one (1) additional channel PEG access channel, provided upon request by the City when programming on the existing PEG Access channels occupies fifty percent (50%) of the hours between 11:00 a.m. and 11:00 p.m., for any twelve (12) consecutive weeks.

In support of Public Access, Educational Access and Government Access programming, our franchise requires the Grantee to pay:

- 1) The City twenty eight cents (\$0.28) per subscriber per month (excluding subscribers attributable to hotels, motels and to free service to City buildings, schools, and other public agencies) in support of PEG access channels.
- 2) Auburn Area Access, Inc, City assigned managers of the PEG channels, the sum of (a) fifty cents (\$0.50) per subscriber in the City per month and (b) two thousand five hundred dollars (\$2,500.00) per quarter.

Our franchise requires that the Grantee shall install and maintain an emergency alert system (EAS) for use in transmitting emergency act notifications and emergency act terminations in local and state-wide situations as may be designated to be an emergency. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

1. Cable System Office Hours and Telephone Availability

- a. The Grantee will maintain a local, toll-free or collect call telephone access line which will be available to subscribers twenty-four (24) hours a day, seven (7) days a week.
 - i. Trained representatives of the Grantee will be available to respond to subscriber telephone inquiries during normal business hours, as defined herein.
 - ii. After normal business hours, an access line will be available to be answered by a service or an automated response system, including a phone answering system. Inquiries received after normal business hours must be responded to by a trained representative of the Grantee on the next business day.

- b. Under Normal Operating Conditions, as defined herein, telephone answer time by a customer representative, including wait time, will not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time will not exceed thirty (30) seconds. These standards will be met no less than ninety (90) percent of the time under normal operation conditions, measured on a quarterly basis.
- c. The Grantee shall not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards set forth above unless an historical record of complaints indicates a clear failure to comply with such standards, or as otherwise permissible under federal law.
- d. Under normal operating conditions, the subscriber will receive a busy signal less than three percent of the time.
- e. Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located in or near the Franchise Area.

2. Installations, Outages and Service Calls

Under normal operating conditions, each of the following four standards will be met no less than ninety-five (95) percent of the time, as measured by the Grantee on a quarterly basis:

- a. Standard installations will be performed within seven business days after an order has been placed. "Standard" installations are those that are located up to one hundred fifty (150) feet from the existing distribution system.
- b. Excluding conditions beyond its control, the Grantee will begin working on service interruptions, as defined herein, promptly and in no event later than twenty-four (24) hours after the interruption becomes known. The Grantee will begin actions to correct other service problems the next business day after notification of the service problem.
- c. The Grantee will provide "appointment window" alternatives for installations, service calls, and other installation activities, which will be either a specific time or, at maximum, a four-hour block during normal business hours.
- d. The Grantee shall not cancel an appointment with a subscriber or potential subscriber after the close of business on the business day prior to the scheduled appointment.

3. Communications between the Grantee and Subscribers

- a. Notifications to Subscribers.
 - i. The Grantee shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
 - (A) Products and services offered;
 - (B) Prices and options for services and conditions of subscription to programming and other services;
 - (C) Installation and service maintenance policies;
 - (D) Instructions on how to use the service;
 - (E) Channel positions of programming carried on the Cable System; and
 - (F) Billing and complaint procedures, including the address and telephone number of the City's cable office.

- ii. Subscribers will be notified of any changes in rates, programming services or channel positions as soon as possible through announcements on the Cable System and in writing. Notice will be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

b. Billing

- i. Bills will be clear, concise and understandable. Bills will be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
 - ii. In case of a billing dispute, the Grantee will respond to a written complaint from a Subscriber within thirty (30) days from receipt of the complaint.
- c. Refund checks will be issued promptly, but no later than either (1) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or (2) the return of the equipment supplied by the Grantee if service is terminated.
- d. Credits for service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

Our franchise contains the following reasonable build schedule for the cable operator:

- 1) Within thirty (30) days after acceptance of any Franchise, the Grantee shall proceed with due diligence to obtain all necessary permits and authorizations which are required in the conduct of its business, including, but not limited to, any utility joint use attachment agreements, microwave carrier licenses, and any other permits, licenses and authorizations to be granted by duly constituted regulatory agencies having jurisdiction over the operation of Cable Systems, or associated microwave transmission facilities.
- 2) Within six months after obtaining all necessary permits, licenses and authorizations, including right of access to poles and conduits, Grantee shall commence construction and installation of the Cable System.
- 3) Within one year after the commencement of construction and installation of the Cable System, Grantee shall proceed to render Cable Service to Subscribers, and the completion of the installation and construction shall be pursued with reasonable diligence thereafter, so that service to all of the areas designated and scheduled in accordance with a Franchise agreement shall be provided as set forth therein.

Our franchise requires that the cable operator currently provide service to the following areas of our community:

A minimum density of 40 dwelling units per cable plant mile as measured from the Grantee's existing distribution plant ("Cable Plant Mile"); or (ii) the development is not within the 2004 Existing City Limits and has a minimum density of 60 dwelling units per Cable Plant Mile and in both cases (iii) the development has made its trenches available to Grantee in accordance with the requirements of Section 14(K) of this Ordinance. After such extension of distribution lines, Grantee shall charge its normal installation rate to Subscribers within the development to the extent that a Subscriber is within the Standard Distances of Grantee's distribution cable within the development.

The franchise further requires that the Grantee provide without charge, one (1) outlet with basic service and extended basic service to any school or occupiable public building that satisfies the requirements for a standard installation. The City, County, or school may, at its own expense and without charge, transmit the signals to all rooms within the building.

In order to ensure that our residents have access to current telecommunications technologies, the Franchise requires that the Grantee establish a one (1) GHZ hybrid fiber optic/coaxial cable platform with 870 MHz of capacity, to be completed within twelve (12) months of the franchise enactment date. Written certification provided to the City by an independent engineer automatically extended the franchise for an additional five (5) years, to the maximum allowable fifteen (15) years. In addition to the rebuild, the Grantee will extend the Cable System distribution plant to the business district (addresses specified in Exhibit B of the franchise) within 24 months of the franchise enactment date (yet to be completed).

Our franchise enabling ordinance intends to promote the public health, safety, and general welfare by granting one or more Franchises for the installation, operation and maintenance of Cable Systems within the City; to establish franchise procedures and standards that encourage the growth and development of Cable Services in the City; to promote availability of quality Cable Services to City residents, businesses, the City and other public institutions; and to encourage the development of and to improve local programming including Public, Educational, and Governmental Access programming. This document alone serves as a vehicle to establish a Level Playing Field to all potential competitors.

Our franchise contains the following insurance and bonding requirements: the Grantee shall file with the City Clerk and annually maintain in full force a corporate security (or similar) bond of twenty-five thousand dollars (\$25,000). The Grantee shall indemnify and hold harmless the City, its officers, council, boards, commissions, agents, and employees, against and from any and all claims, demands, causes of actions, actions, suits, proceedings, and damages, of every kind and nature whatsoever. The Grantee shall obtain, maintain, and pay all premiums for the following insurance policies: commercial general liability (not less than \$5,000,000), environmental contamination liability (\$1,000,000 minimum limit), comprehensive automobile liability (not less than \$1,000,000), broadcaster's liability (not less than \$1,000,000 per occurrence), and workers' compensation and employer's liability (statutory limits). The City shall be named as an additional insured on all policies (other than workers' compensation and employer's liability). All insurance shall be effected under valid and enforceable policies insured by insurance carriers, or by surplus line carriers on the State Insurance Commissioner's approved list, with A or better ratings (by A.M. Best Company) licensed to do business in the State of California. No insurance policy recovery by the City shall be any limitation upon the liability of Grantee to the City or to other persons. The Grantee's contractors and subcontractors shall carry, or be covered by the Grantee's policies, in full force and effect all the above insurance requirements (except broadcaster's liability).

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Developers at their expense shall obtain all necessary easements and right-of-ways as necessary for the placement and maintenance of cable television system infrastructure in all underground trenches and all overhead infrastructures. This includes but is not limited to, railroad crossing thoroughfares, streams, rivers and waterways. Cable television companies shall be included in all legal descriptions and must be recorded with the Placer County Records Office by Developers.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement. For example:

- 1) Grantee shall be prohibited from directly or indirectly providing information concerning the viewing patterns of identifiable individual Subscribers to any person, group or organization for any purpose.

- 2) Because the Grantee's failure to comply with provisions of this Franchise will result in injury to the City, and because it will be difficult to estimate the extent of such injury, the City and the Grantee agree to the following liquidated damages.
- a) For failure to complete construction or extend service in accordance with the Franchise: two hundred fifty dollars (\$250.00) per day for each day the violation continues;
 - b) For failure to comply with material requirements for PEG Access use of the Cable System, or for material violations of a Grantee's agreement with Auburn Area Access, Inc. or subsequent designated PEG Access channel operator, including failure to make timely payments of PEG support moneys provided for in such Agreement: two hundred fifty dollars (\$250.00) per day for each day the violation continues;
 - c) For repeated, willful, or continuing failure to submit reports, maintain records, provide documents, maps or information: two hundred dollars (\$200.00) per day for each day the violation continues;
 - d) For violation of customer service standards: one hundred dollars (\$100.00) per violation per day and;
 - e) For failure to comply with transfer provisions: five hundred dollars (\$500.00) per day from the date of unlawful transfer.
 - f) For all other material violations: two hundred fifty dollars (\$250.00) per day for each day the violation continues.
 - g) All remedies provided under the Franchise or this Ordinance shall be cumulative, unless otherwise expressly stated.
- 3) The Grantee shall be responsible for insuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time, including the performance of all tests required under the FCC rules. As provided in the FCC rules, the City shall have, upon request, the right to obtain a copy of tests and records required in accordance with such rules, and shall possess such other authority allowed by federal law, to enforce compliance with such standards.
- 4) The City may inspect the Grantee's Cable System during construction or any rebuild, and upon completion, shall have the right to inspect the Cable System and the Grantee's equipment used in the maintenance of that Cable System at any time. If, based on Subscriber complaints or based on its own investigation, the City believes that the Cable System may not be operating in compliance with this Ordinance, it may require the Grantee to perform tests and to prepare a report to the City on the results of those tests, including a report identifying any problem found and steps taken to correct the problem.
- 5) The City shall have the right to inspect the Grantee's revenue records under the Franchise and the right of audit and re-computation of any and all amounts payable under this Ordinance; the cost of said audit shall be borne by Grantee when the same results in increasing, by more than ten (10) percent, the Grantee's annual payment to the City.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

- A. The provisions of the Franchise shall be construed in accordance with the laws of the State of California and federal law, including but not limited to the Cable Act and the rules of the FCC.
- B. In the even of a conflict among codes and standards, the most stringent code or standard shall apply (except insofar as those standards, if followed, would result in a cable system which could not meet requirements of federal, state, or local law; and except for minor modifications as are typical in the industry).

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, with regard to application for Franchise:

- A. Notice of Hearing. If the City Council shall determine to further consider the application, the following may be done:
 - a. The Council may decide and specify the terms and conditions of any Franchise to be granted hereunder and as herein provided.
 - b. The Council may pass its ordinance of intention to consider the granting of such a Franchise, giving notice of receipt of the application, and describing the character of the Franchise, the terms and conditions upon which such Franchise is proposed to be granted, that copies of the proposed Franchise may be obtained at the office of the City Clerk, fixing and setting forth a day, hour, and place certain when and where any persons having any interest therein or objection to the granting thereof may file written protests and appear before the Council and be heard, and directing the City Clerk or City Manager to publish said ordinance at least once within ten (10) days of the passage thereof in a newspaper of general circulation within the City.
- B. Decision Regarding Award of Franchise. At the time set for any hearing, or at any adjournment thereof, the Council shall proceed to hear all written protests. Thereafter, the Council may make one of the following determinations:
 - a. That such Franchise be denied; or
 - b. That such Franchise be granted upon the terms and conditions as specified in the resolution of intention to grant the same; or
 - c. That such Franchise be granted, but upon the terms and conditions different from those specified in the resolution of intention to grant the same.

Competitive Cable Systems

A competitive provider to provide service has never approached our community.

Conclusions

The local cable franchising process functions successfully in Auburn, California. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account. For further reference, please find a copy of our Franchise Enabling Ordinance: 04-06 (Appendix A) and our Franchise: 04-07 (Appendix B) as the information outlined in this document only serves as a summary.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for our local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow our community to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Auburn therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Auburn, California

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